August 26, 2016

In the Matter of
MB Docket No. 16-42, Expanding Consumers' Video Navigation Choices
CS Docket No. 97-80, Commercial Availability of Navigation Devices

VIA ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Dear Ms. Dortch:

Attached please find a brief statement from the Future of TV Coalition regarding this proceeding.

Thank you for time and assistance submitting their views into this docket for the Commissioners' consideration.

Sincerely,

Future of TV Coalition

The Future of TV Coalition promotes market-based innovation that offers TV viewers an unprecedented volume of high-quality, diverse programming available on an expanding universe of devices and services, while opposing unnecessary technology mandates that would threaten this innovation and diversity.

Future of TV Coalition
yesterday · 4 min read

Silicon Valley's Push for a Federal Handout Continues

CCIA—a trade association that lobbies on behalf of "Big Tech," Silicon Valley's biggest and most profitable tech companies—weighed back in to the set-top box debate on Friday trying to convince an increasingly skeptical FCC that it should give tech firms free, unrestricted access to valuable TV programming in blatant violation of basic copyright law.

You almost have to admire the chutzpah.

Even after nearly 200 bipartisan members of Congress expressed serious doubts, even after the creative industry voiced concern that the proposal would undermine the creative economy, and even after the U.S. Copyright Office issued a comprehensive analysis of how the FCC's initial proposal to "unlock" pay-TV content would violate core copyright law, tech lobbyists *still* haven't stopped pushing for a massive federal handout.

As momentum builds behind an alternative framework proposed by TV programmers and distributors, CCIA is demanding that the Commission "bolt on" the original plan's unbundling mandate to any forthcoming compromise—a move that would ensure the next proposal has the same copyright and privacy flaws as the last one.

And while CCIA may claim to be championing consumers, this astonishing admission buried on the last page removes any doubt of the real agenda:

> *"Because third parties are not parties to and lack access to programmers' private contracts, there should be no expectation that competitive navigation devices can or should have to follow those restrictions."*

Through its perhaps unintended candor, CCIA has laid bare its intended land grab. Big Tech is *still* demanding the FCC's approval to repackage and monetize valuable programming *without having to even honor the licensing terms*—much less pay anything to the content owners for the privilege.

But this is exactly the problem that the U.S. Copyright Office identified in the original FCC proposal:

> *"Rather than being passive conduits for licensed programming, it seems that a broad array of the third-party devices and services that would be enabled by the Proposed Rule would essentially be given access to a valuable bundle of copyrighted works, and could repackage and retransmit those works for a profit, without having to comply with agreed contractual terms.*

> *"…The Proposed Rule would thus appear to inappropriately restrict copyright owners' exclusive right to* authorize parties of their choosing *to publicly perform, display, reproduce and distribute their works according to agreed conditions, and to seek remuneration for additional uses of their works."*

Given the clarity with which the USCO undermined Silicon Valley's demand for an unlawful content windfall, it's perhaps not surprising that tech-funded proxy groups have responded by declaring war on the agency. But hyperbole and ad hominem attacks won't change the facts or the law, and the content-poaching mandate demanded by CCIA is plainly illegal.

CCIA tries to suggest that "digital certificates" could magically repair the gaping copyright and consumer privacy holes in their plan. They won't. This is merely another version of the "self-certification" framework—the "just trust us" approach—that has repeatedly drawn strong criticism from lawmakers and privacy advocates.

So if we're all in agreement that consumers should have more alternatives to rented set-top boxes, but giving third party services free access to "unbundled" content is a legal and economic non-starter, then what's the answer?

In a word: Apps.

Content creators and TV distributors have now been making the case to the FCC for more than 18 months that apps, not unbundling mandates, can let customers watch pay-TV services on a wide range of consumer-owned retail devices without undermining copyright protections, consumer privacy, and programming diversity. These "apps solutions" aren't hypothetical—major TV have already unveiled apps that let customers watch TV without renting a box. And the industry has put forward a proposal that would *require* every major provider to deploy apps built on a widely-used open standard—which would allow *any manufacturer* to build and market a device capable of supporting pay-TV services.

CCIA's attempts to undermine this "apps approach" just don't hold up to scrutiny. For example, the lobbying organization falsely states that "MVPDs and programmers also claim that other requirements in those private contracts only can be implemented in *MVPD-controlled navigation devices*." To the contrary, the apps-based "Ditch the Box" alternative calls for providers to deploy apps that would run on a wide range of *third-party retail devices*. Manufacturers could build and market their own boxes, featuring their own differentiated top-level user interfaces and search menus, running TV providers' apps offered under standard, non-discriminatory licenses.

Perhaps CCIA's most ridiculous argument is their dismissal of HTML5—one of the most widely adopted open standards already in use in today's video ecosystem—by saying it "cannot run on all [existing] devices." But the "Ditch the Box" apps approach still allows TV providers to develop apps for non-HTML5 hardware. And despite the feigned concern over current hardware compatibility, CCIA's proposed alternative—"bolting on" the discredited "information flows" mandate—would *require developing a completely new protocol from scratch.* CCIA attempts to whistle past this logical graveyard by pretending "it would be relatively simple and quick to standardize a protocol"—a claim that the independent standards body DLNA has already rejected.

Content creators and distributors are committed to working constructively with the FCC to finalize a solution that helps expand consumers' options while still protecting copyright, consumer privacy, and programming diversity. Apps offer a path forward—but not if the same flaws from the original plan are simply "bolted on" to satisfy the demands of Big Tech lobbyists.